IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1855 of 2017
and
C.M.P.No.10083 of 2017

Kanagaraj
S/o.M.S.Muthusamy ... Appellant / 2nd Respondent

Vs.

1. C.Suseela
   W/o.Late K.Mani @ Chandrasekar

2. C.Kumaresan
   S/o. Late K.Mani @ Chandrasekar

3. C.Sampathkumar
   S/o. Late K.Mani @ Chandrasekar

4. C.Dhandapani
   S/o. Late K.Mani @ Chandrasekar

5. R.Mangaiyakarasi
   D/o. Late K.Mani @ Chandrasekar

6. Kanniammal
W/o.Late Krishnsamy Mudaliyar ... Respondents 1 to 6 / Claimants

7. P.Dharmar
S/o.Prabhakaran ... 7th Respondent / 1st Respondent

8. M/s.Royal Sundaram Alliance Insurance
Company Ltd.,
Door No.4A, 4th Floor,
Thirumalai Towers,
723, Avinashi Road,
Coimbatore - 641 01. ... 8th Respondent / 3rd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 16.09.2014 made in M.C.O.P.No.701 and 2008 on the file of the Motor Accidents Claims Tribunal-cum-learned 1st Additional District Judge, Tirupur.

For Appellant	:	Mr.K.S.Karthik Raja for Mr.Vignesh Karthick
For Respondents	:	Mr.E.Rajadurai for Mr.N.Vijaya Raghavan for R8 R1 to R6 - Not ready notice No appearance for R7

J U D G M E N T

The present appeals is filed against the award passed by the Motor Accidents Claims Tribunal-cum-learned 1st Additional District Judge, Tirupur in M.C.O.P.No.701 of 2008, dated 16.09.2014.

2. The appellant is the owner of the offending vehicle. The brief facts of the case is that on 01.05.2008, at about 10.30 a.m., when the deceased Mani was driving Moped bearing No.TN-39-F-7003, at that time, a mini auto bearing Registration No.TN-39-AQ--8902 driven by the seventh respondent / first respondent dashed against the Moped driven by the deceased Mani, as a result of which, the deceased sustained serious injuries and en-route the hospital, he died. The claimants are dependents of the deceased Mani filed claim petition claiming compensation of Rs.15,00,000/- for the death of the deceased.

3. The Tribunal after taking into consideration the evidence of P.W.1 - wife of the deceased, came to the conclusion that the deceased was owing bakery and arrived at a monthly income of Rs.10,000/-. Adding other heads of compensation, the Tribunal awarded a sum of Rs.10,83,000/- as compensation and directed the Insurance Company to pay and recover the same from the owner of the vehicle, i.e., appellant / second respondent.

4. The present appeal is filed by the owner of the vehicle, i.e., Kanagaraj on the ground that the Tribunal ought not to have ordered pay and recovery as there was no breach of policy conditions and that the driver of the vehicle was possessing valid driving license as on the date of the accident. The learned counsel substantiates his case by stating that the driver of the vehicle was having a driving license which was valid up to 24.07.2020 whereas the accident took place on 01.05.2008. He further states that the Tribunal ought to have fixed the entire liability on the Insurance Company to pay the compensation amount and ought not to have ordered for pay and recovery.

5. The learned counsel for the appellant / second respondent relies upon the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd vs Swaran Singh & Ors*** reported in ***AIR 2004 SCC 1531*** wherein the guidelines have been framed by the Hon'ble Supreme Court, where it was held that "onus is always upon the Insurance Company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, “pay and recover” can be ordered in case of third party risks".The Tribunal is required to consider as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, does not fulfil the requirements of law or not will have to be determined in each case. In this particular case, the owner of the vehicle has produced the valid driving license possessed by the driver of the vehicle. Therefore, the Tribunal had erroneously ordered for pay and recovery and that the Insurance Company alone was responsible to pay the compensation.

6. The learned counsel for the Insurance Company submits that the Insurance Company has not received any information about the accident from the owner of the Vehicle and that the owner of the vehicle has not submitted any claim form before the Insurance Company and therefore, the Insurance Company is not liable to pay compensation on behalf of the owner of the vehicle. That apart, the learned counsel for the Insurance Company further submits that the accident was caused due to rash and negligent driving of the deceased Mani and he also has contributed to the accident. The issue of contributory negligence was never considered by the Tribunal before awarding the compensation. The learned counsel assails the award on the ground that the driver of the vehicle was not having a valid and effective driving license to drive the specific type of vehicle which was involved in the accident and therefore, there is violation of Section 3 of the Motor Vehicles Act. The learned counsel also submitted that the compensation arrived at by the Tribunal by fixing monthly income of the deceased at Rs.10,000/- was not supported by any documentary evidence and therefore, the compensation fixed was disproportionate and

exaggerated. Therefore, the Insurance Company is not liable to pay compensation and the Tribunal was justified in ordering pay and recovery.

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. In the landmark judgment with respect to pay and recovery, the Hon'ble Supreme Court of India in ***Swaran Singh's case*** cited *supra* laid down the guidelines as to when pay and recovery can be ordered by the Tribunal. The Hon'ble Supreme Court held that the court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case. Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

9. Following the aforestated facts and circumstances of the case, since the owner of the vehicle has produced the driving license of the driver, which is valid at the time of accident, the award insofar as the Tribunal directing the Insurance Company to pay the compensation and recover the same from the owner of the vehicle is set aside and the Insurance Company shall pay the compensation as awarded by the Tribunal to the respondents 1 to 6 / claimants within a period of four weeks from the date of receipt of a copy of the judgment. If the award amount has already been deposited by the Insurance Company, the claimants are at liberty to withdraw the same by filing appropriate application before the Tribunal.

10. Accordingly, this Civil Miscellaneous Appeal is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

30.10.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Motor Accidents Claims Tribunal-cum-
   learned 1st Additional District Judge,
   Tirupur.

2. The Section Officer,
   V.R. Section,
   High Court, Chennai.

M.DHANDAPANI, J.

vji

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